October Term, 1978

No. 78-1746

LEE ANN JOHNSON,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

BRIEF CONTRA PETITION FOR A WRIT OF CERTIORARI

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1. The Opinion of the Ohio Supreme Court in *State* v. *Griffey*, 35 Ohio St. 2d 101, 298 NE 2d 605 (1973), is a correct interpretation of *Boykin* v. *Alabama*, 395 US 238 (1969), and was correctly followed in the case at bar. 1

2. Any disagreement between State Courts over the interpretation of *Boykin* clearly does not represent a failure to follow that case but rather a following of *Cooper* v. *California*, 386 U.S. 58 (1967), where the Court said states may impose broader constitutional protections than required by the United States Supreme Court. 3

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1746

LEE ANN JOHNSON, Petitioner

vs.

STATE OF OHIO, Respondent.

BRIEF CONTRA PETITION FOR A WRIT OF CERTIORARI

ARGUMENT

I. THE OPINION OF THE OHIO SUPREME COURT IN STATE V. GRIFFEY, 35 OHIO ST. 2d 101, 298 NE 2d 605 (1973), IS A CORRECT INTERPRETATION OF BOYKIN V. ALABAMA 395 US 238 (1969) AND WAS CORRECTLY FOLLOWED IN THE CASE AT BAR.

In *Boykin* v. *Alabama*, 395 U.S. 238, 23 L. Ed. 2d 274, 280 (1969) the Supreme Court stated that the dissenters in the Alabama high court "stated the law accurately when they concluded that there was reversible error because the record does not disclose that the defendant voluntarily and understandingly entered his pleas of guilty." The record in this case indicates that there was such a voluntary understanding plea of guilty. What the above

quoted language makes clear is that although *Boykin,* of course, discussed the elements of a voluntary, knowing waiver, the court came down on the totality of circumstances. In *Boykin,* the record was silent as to any inquiry from the bench concerning the voluntariness of the plea. This case has been correctly interpreted in this state.

In *State* v. *Griffey* 29 Ohio App. 2d 246 (1972) the Court of Appeals extrapolated from *Miranda* v. *Arizona* 384 U.S. 436 and *Boykin,* a requirement of a *rigid* recital of certain constitutional rights. The Ohio Supreme Court rejected the formalistic conclusion reached by the appeals court adopting instead the criteria listed in their own.

Syllabus. *State* v. *Griffey*:

> "A defendant's plea of guilty in a felony case was voluntarily, knowingly and intelligently made where the record discloses that: (1) defendant's counsel explained to him the facts and circumstances surrounding his plea; (2) the trial court inquired of defendant whether he understood that he had a right to trial by jury or to the court, and informed defendant that the state was obligated to prove his guilt beyond a reasonable doubt, and that the crime charged was an offense for which he could be incarcerated; (3) defendant indicated to the court that he understood those rights, that he was pleading guilty of his own free will and that no inducement or promise had been made to him in entering his plea; (4) defendant had already been confronted by his accusers at a preliminary hearing; and (5) the other count of a two-count indictment was nollied, indicating that defendant was motivated by a desire to seek a lesser penalty." *State* v. *Griffey,* 35 Ohio St. 2d 101 (1973).

This syllabus correctly applies *Boykin* to the facts of petitioner's case. Without belaboring the point, it is apparent from the Syllabus and the statement of facts in the petition that *State* v. *Griffey* was followed to the letter.

Petitioner was adequately represented by counsel and the prosecution, or more properly the Court, did in fact spread a voluntary, knowing, intelligent waiver on the record. The federal Constitutional requirements were adhered to. *Boykin, Griffey.*

The record in this case clearly indicates that the direct opposite of what happened in *Boykin* occurred in the case at bar. The voluntary and intelligent nature of the guilty plea was quite adequately spread on the record.

2. ANY DISAGREEMENT BETWEEN STATE COURTS OVER THE INTERPRETATION OF BOYKIN CLEARLY DOES NOT REPRESENT A FAILURE TO FOLLOW THAT CASE BUT RATHER A FOLLOWING OF COOPER V. CALIFORNIA 386 U.S. 58 (1967) WHERE THE COURT SAID STATES MAY IMPOSE BROADER CONSTITUTIONAL PROTECTIONS THAN REQUIRED BY THE UNITED STATES SUPREME COURT.

The reading of the cases recited by petitioner only leads to the conclusion that some state courts have elected to go beyond what was required in *Boykin.* However, the law as set down by the Ohio Supreme Court in *Griffey* is a correct following of *Boykin.*

CONCLUSION

There is no federal question. *Boykin* was correctly followed in *Griffey*. The writ should be denied.

Respectfully submitted,

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